

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREA EMANUEL,

Plaintiff,

**DECLARATION OF
ROCCO G. AVALLONE**

- against -

STATE OF NEW YORK, DEPARTMENT OF
CORRECTIONAL SERVICES ("DOCS")
LT. SALVATORE MUNAFO, LT. GEORGE
VAN VALKENBURG, LT. ROBERT
MURRAY, SGT. ROBERT WILSON
sued in their individual and
professional capacity,

DOCKET NUMBER:
08 CV 1250 (RMB)

Defendants.

-----X

ROCCO G. AVALLONE, being duly sworn, states the following
under penalty of perjury:

1. I am an attorney at law duly admitted to practice in the
State and Federal Court of New York, and associated with the law
firm of Cronin & Byczek, LLP, counsel for the plaintiff, ANDREA
EMANUEL, in this matter.

2. This Declaration is submitted in support of plaintiff's
Opposition to Defendants' Motion to Dismiss, pursuant to Federal
Rules of Civil Procedure 12(b)(1) and (6). This Declaration is
based upon my personal knowledge as counsel for the plaintiff in
this case.

3. Plaintiff submits the annexed document and accompanying
Memorandum of Law.

4. In opposition to defendants' Motion to Dismiss is:

Exhibit A:

The Right to Sue letter with transmission verification report on top of the page that it was faxed to plaintiff's counsel on November 8, 2007, along with a copy of the November 7, 2007 letter by Rocco Avallone to EEOC.

Dated: Lake Success, New York
August 21, 2008


Rocco G. Avallone (RA8055)

STATE OF NEW YORK, COUNTY OF NASSAU : SS.


SHERYL SERRANO, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside at Hicksville, New York 11801. That on the 21st day of August 2008, I served a true copy of the **DECLARATION OF ROCCO G. AVALLONE with EXHIBIT** in the following manner: via regular mail addressed to the last known addresses of the addressees as indicated below:

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorneys for Defendants
120 Broadway, 24th Floor
New York, New York 10271
Attn.: Julinda Dawkins, AAG


SHERYL SERRANO

Sworn to before me this
21th day of August 2008


Notary Public

PAMELA J. SARRANTONIO
Notary Public, State of New York
No. 01SA6118238
Qualified in Queens County
Commission Expires 11/01/2011

EXHIBIT A

EEOC Form 161 (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Andrea L. Emanuel
2255 5th Avenue Apr. #12F
New York, NY 10037

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2007-03788

Holly M. Woodyard,
Investigator

(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☒ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

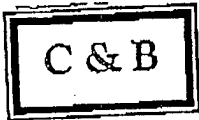
Spencer H. Lewis, Jr.,
Director

10/19/07

(Date Mailed)

Enclosures(s)

cc: New York State Dept. of Correctional Facility
611 Edgecombe Avenue
New York, NY 10032
Attn: Human Resource Director



CRONIN & BYCZEK, LLP

Attorneys and Counselors at Law

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CHRISTOPHER S. BYCZEK*

OF COUNSEL
CHRISTOPHER FALCONETTI
DOUG RIOS DUFFY

DOMINICK REVILLINO
ROCCO G. AVALLONE**

HOWARD GREENWALD

*MEMBER OF NY AND FL BAR
**MEMBER OF NY AND CT BAR

November 7, 2007

Equal Employment Opportunity Commission
33 Whitehall Street
New York, New York 10004

Re: Andrea L. Emanuel v. New York State, et al.
Charge No.: 16GA703788

Dear Sir/Madame:

This office represents Ms. Andrea L. Emanuel regarding the above-referenced charge of Discrimination.

Pursuant to the Civil Rights Act, this letter is to request a "right to sue" letter, so that we may commence litigation immediately.

Thank you for your courtesy and cooperation herein.

Very truly yours,

Rocco G. Avallone

RGA:sas